

**David A. Wright, Chairman**  
Chairman, South Carolina Public Service Commission

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**David Boyd, Membership**  
Commissioner, Minnesota Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic

**Greg R. White, Communications**  
Commissioner, Michigan Public Service Commission



September 10, 2012

Dear Chairman Bingaman & Ranking Member Murkowski:

The Nuclear Waste Strategy Coalition (NWSC) thanks the Senate Energy & Natural Resources Committee for convening a hearing on important issues pertaining to nuclear waste disposal and submits the following comments regarding S. 3469, the Nuclear Waste Administration Act of 2012. Described by its sponsor as a bill to implement the recommendations of the Blue Ribbon Commission on America's Nuclear Future (BRC), S. 3469 and the related September 12<sup>th</sup> hearing provide an opportunity to begin building a record for future Congressional action on the BRC and other approaches to best meet the needs of our country with respect to nuclear waste policy reform.

The BRC report contained many recommendations that our members have long supported, including funding reform to protect consumers' continuing fee payments and the Nuclear Waste Fund (NWF) balance; prompt development of consolidated interim storage and geologic disposal; and an independent waste management organization with the authority and resources to succeed.

Although not addressed by the BRC, the proposed Yucca Mountain repository remains the nation's best hope for "promptly" developing geologic disposal. The Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) should resume the Yucca Mountain licensing process both as a requirement of law and as a matter of respect to taxpayers and electricity customers who have invested billions of dollars in the license application. The NWSC supports Yucca Mountain *and* the BRC recommendations, and we emphasize these are not mutually exclusive positions. Nothing in the BRC report precludes resumption of work on Yucca Mountain. In fact, the BRC recommendations may be viewed as complementary steps to address needs in the interim and over the longer-term. Specifically, consolidated interim storage is needed until a repository is opened, and an additional repository – perhaps sited using a consent-based process – will be needed under existing law.

With that context, the NWSC provides feedback regarding certain provisions of S. 3469:

#### ***Independent Waste Management Organization***

Following years of budget cuts, management turnover, and missed deadlines, our members wholeheartedly support the BRC recommendation for a new, single-purpose organization to develop and implement a focused, integrated program for the transportation, storage, and disposal of nuclear waste. Such an organization could be structured numerous ways. We prefer models that ensure accountability but reasonably insulate the organization from political interference and

excessive turnover in key positions. Additionally, stakeholders should serve in some type of oversight or advisory capacity. The proposed Nuclear Waste Administration in S. 3469 is lacking with respect to some of the key elements noted here. While not endorsing any one model at this point, we prefer the government-owned corporation model as recommended by the BRC over models that set up government agencies with both politically-appointed leadership and oversight boards that tend to change with every administration. Finally, regardless of the model chosen for transferring nuclear waste management functions out of DOE, guidance to facilitate a smooth transition would be helpful.

### ***Funding Reform***

Consistent with the BRC recommendations, the Administration, with Congressional support, needs to fix the funding for the nuclear waste program. The BRC eloquently stated the importance of reforming the existing funding mechanism as follows:

The success of a revitalized nuclear waste management program will depend on making the revenues generated by the nuclear waste fee and the balance in the NWF available when needed and in the amounts needed to implement the program.

In a letter to the President over a month before their report was issued, the BRC Co-Chairs delineated near-term steps for timely actions that the current unsustainable situation warrants. Unfortunately, those recommendations have not been followed. As for S. 3469's creation of a new Working Capital Fund, we commend the effort to stop future raiding of consumer payments intended for the program. However, access to the Working Capital Fund would be subject to appropriations, potentially limiting the Administrator's ability to carry out necessary program activities. Also, we support NARUC's suggestion to strengthen financial support of the new organization by transferring the interest earned on the NWF balance to the new Working Capital Fund. Finally, we would like assurance that the balance in the NWF will be made available when program needs dictate.

### ***Consolidated Interim Storage***

Consolidated interim storage (CIS) should be authorized and funded as a safe, cost-effective option for managing spent nuclear fuel and high-level radioactive waste from decommissioned and operating plants. While a permanent facility is being licensed and constructed, one or more CIS facilities would permit the federal government to begin meeting its obligations and reduce taxpayer liabilities associated with the government's delay. As such, we support the BRC call for prompt efforts to develop CIS with used nuclear fuel from the decommissioned reactor sites "first in line" for transfer. We were delighted to see that approach in the Senate appropriations language introduced earlier this year, and we suggest that comprehensive reform proposals such as S. 3469 expressly include language to ensure that CIS is authorized.

Although well-intentioned, the linkage between CIS and progress on a permanent disposal facility in S. 3469 prevents site-specific flexibility and does not need to be legislatively mandated. Recognizing a need for disposal under any scenario, the country must promptly site and construct a permanent disposal facility, and we urge Congressional efforts to properly fund the repository program accordingly. That would best ensure that current dry cask storage and future CIS facilities do not become *de facto* permanent disposal facilities. At the same time, we need authorization and appropriations for CIS that affords as much flexibility as possible. In a consent-based siting

scenario, potential CIS facility host communities would be empowered to assess and manage the risks of becoming *de facto* permanent facilities, and they will undoubtedly do so.

Additionally, the bill's requirement that utilities settle their lawsuits against the federal government in order to be permitted to use a CIS facility would seem to perpetuate the untenable situation of prolonged on-site dry cask storage and mounting federal government liability. We need not remind Congress about which entity has not met its obligations under the law and per its contracts with utilities. The federal government still has a roadmap for avoiding future liability via performance.

### ***Consent-Based Siting***

With respect to consent-based siting processes, the NWSC emphasizes the need for flexibility so as not to limit creative and effective solutions that may be proposed by potential host communities. With that in mind, we agree that is important to have an enforceable agreement at some point.

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While many of the BRC recommendations require legislative solutions, DOE should take action immediately to advance BRC near-term recommendations under existing authority. Until that happens, DOE should be held accountable to deliver a plan that reflects a sense of urgency, outlines specific actions, and takes ownership for the country's high level radioactive waste. Therefore, we urge you to remind DOE of the Senate's interest in receiving the implementation plan.

In addition, it appears likely that the court will soon order the NRC and DOE to resume the Yucca Mountain licensing process. DOE and NRC should have executable plans in place to do so. We urge you to request a specific plan, including the resources required for completing the licensing process, from DOE and NRC.

Thank you for your leadership in initiating the dialogue pertaining to certain BRC recommendations. The NWSC stands ready to work with you and your Congressional colleagues, the Administration, and DOE to advance meaningful nuclear waste policy reform. Please let us know if you would like to discuss further.

Sincerely,

A handwritten signature in dark ink, appearing to read "D.A. Wright", with a stylized flourish at the end.

David A. Wright  
Chairman, Nuclear Waste Strategy Coalition  
Chairman, South Carolina Public Service Commission

*The [NWSC](#) is an ad hoc organization representing the collective interests of state utility regulators, consumer advocates, electric utilities, local governments, tribes, and associate members on nuclear waste policy matters. Our primary focus is to protect ratepayer payments into the Nuclear Waste Fund and to support the removal and ultimate disposal of spent nuclear fuel and high-level radioactive waste currently stranded at numerous sites across the nation.*

cc: Bob Simon, Majority Staff Director  
McKie Campbell, Minority Staff Director